



1. The United States Medical Licensing Exam (USMLE) is a standardized examination used to evaluate applicants' competence for purposes of medical licensure in the U.S. and its territories. The USMLE is designed to assess a physician's ability to apply knowledge, concepts, and principles, and to demonstrate fundamental patient-centered skills, that constitute the basis of safe and effective patient care. The USMLE is administered at locations around the world to individuals who are attending, or have attended, medical schools in the United States and abroad. State medical boards rely upon successful completion of the three USMLE component exams, or "Steps," as an important element in the process for licensing physicians.
2. NBME is a private, non-profit organization. Its principal place of business is located in Philadelphia, Pennsylvania. It is registered as a *Professional Society and/or Association* by Guidestar database of Non-profit organizations. <http://www.guidestar.org>
3. NBME and the FSMB together sponsor/partner/provide governance to the United States Medical Licensing Examination ("USMLE"), an examination that is a prerequisite for medical licensing in the United States and its territories. NBME administers the USMLE.
4. FSMB is a private non-profit organization that is incorporated under the laws of Nebraska but located in Eules, Texas. FSMB is registered as a *Research Institute and/or Public Policy Analysis Organization* by Guidestar database. Dr. David Watt former Senior Vice President of Professional Services for FSMB provides an informative PowerPoint presentation on the role of FSMB with respect to the USMLE Organization. This presentation is on file at The University of Texas Health Science Center at San Antonio (please refer to link below). FSMB role in USMLE Organization is as follows:
  - **Participate in governance (composite committee, step committees)**
  - Register and verify eligibility of physicians applying to take USMLE Step 3
  - Maintain score history for physicians completing the USMLE
    - \*Transcript annotations (indeterminate, irregular behavior, special testing accommodations)

<http://uthscsa.edu/gme/documents/fedstatemedbds.pdf>
5. The USMLE Composite Committee, appointed by the FSMB and NBME, establishes policies for the USMLE program. There is a Program Administrator for the USMLE Office of the Secretariat. The Office of the USMLE Secretariat is the central Point of contact for the USMLE program located in **Philadelphia, PA** and operates on behalf of **NBME** and **FSMB** for the **USMLE Organization**. *One of the primary roles of the Program Administrator is to participate in review of exam candidate policy exception requests; and to prepare responses to these requests* (please refer to Program Administrator job description at: <http://nbme.iapplicants.com/ViewJob-684107.html>).
6. In 2011 USMLE Organization announced that they will place an exam limit to the number of times examinees can take to pass a USMLE Step Component. *The previous policy allowed the examinee to take the exam as many times as they needed until passing.*

Defendant posted the following announcement on their website June 12, 2012:

["http://www.usmle.org/announcements/?ContentId=99"](http://www.usmle.org/announcements/?ContentId=99)

*...the following Examinees who have made six or more attempts to pass a Step or Step component, including incomplete attempts, should be aware that all applications to register for additional attempts will not be processed unless they are submitted on or before December 31, 2012. This limit was first announced in August of 2011".*

7. The Announcement refers the reader to the USMLE Bulletin (USMLE Bulletin includes information on all aspects of USMLE, such as eligibility requirements, scheduling test dates, testing, and score reporting) for more information about the Six Attempt Limit Policy and states the following: <http://www.usmle.org/bulletin/eligibility/#TimeLimit>

*"The USMLE program limits to six the total number of times an examinee can take the same Step or Step Component. An examinee is ineligible to take a Step or Step Component if the examinee has made six or more prior attempts to pass that Step or Step Component, including incomplete attempts. All attempts at a Step or Step Component are counted toward the limit, regardless of when the examinations were taken."*

8. If the six attempts have been exceeded and the examinee attempts to register for the Step component the NBME website will inform the examinee that the exam limit has been exhausted and they are no longer eligible to register locking the examinee out from registering for that given Step. ***The Bulletin does not discuss exceptions to this rule or matters involving ADA, Americans with Disability Act Amendment (ADAAA) and Rehabilitation Acts policies.***
9. NBME and FSMB are subject to the requirements of Section 309 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12189, and the implementing regulations, 28 C.F.R. § 36.309.
10. The United States Department of Justice (DOJ) is the federal agency responsible for administering and enforcing Title III of the ADA, 42 U.S.C. §§ 12181-12189. **The DOJ has been investigating plaintiffs' case against NBME and USMLE since November of 2014, and is ongoing** (please refer to court docket document 1-6 filed 06/17/15 Page 4 - 7).
11. Pursuant to Title III of the ADA, private entities that administer examinations related to professional licensing must offer the examinations in a place and manner accessible to persons with disabilities. 42 U.S.C. §12189 and 28 C.F.R. § 36.309.
12. Pursuant to 28 C.F.R. § 36.309, private entities that administer such examinations are required to provide reasonable modifications to the examination and appropriate auxiliary aids and services (i.e., testing accommodations) for persons with disabilities. The purpose of testing accommodations is to ensure, in a reasonable manner, that the "examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual or speaking skills (except where those skills are the factors that

the examination purports to measure).” 28 C.F.R. § 36.309(b)(1)(i). “Required modifications to an examination may include changes in the length of time permitted for completion of the examination.” 28 C.F.R. § 36.309(b)(2).

13. The Attorney General’s Office under 42 U.S.C. § 12188(b)(1)(A)(i) conducts investigations of alleged violations of Title III of the ADA, DOJ is currently investigating plaintiffs’ case that the NBME had failed to grant him reasonable testing accommodations on the basis of a disability for administrations of the USMLE Exams beginning in 2005. Additionally, the *Six Attempt Limit* has been exhausted by Plaintiff for the USMLE Step I exam. **Plaintiffs’ request to modify six attempt policy, is a reasonable accommodation and does not substantially modify the the USMLE’s standards. See e.g. Doe v. Samuel Merritt University, 921 F.Supp. 2d. 958 (N.D. Cal. 2013) (Preliminary Injunction granted allowing student with a disability to take a podiatric licensing examination unlimited times as an accommodation to University’s policy providing for a three exam limit).**
14. NBME had found that the supporting documentation submitted by plaintiff did not demonstrate that he is currently substantially limited in a major life activity as compared to most people, so as to be disabled within the meaning of the ADA, as amended. Please refer to Jocelyn Samuels, Acting Assistant Attorney General letter addressed to Senator Patrick Toomey’s Office dated July 14, 2014 court docket document 1-6 filed 06/17/15 page 4-5 of 7).
15. Plaintiff had submitted sufficient documentation to demonstrate that he is a person with a disability within the meaning of the ADA, and that he was entitled to reasonable testing accommodations to take the USMLE.
16. Plaintiff provided additional documentation to the NBME on April 1<sup>st</sup>, 2014 (Please refer to Document 1-2 Filed 06/17/15 Page 1 of 29.) in support of his request for accommodations on the USMLE Step 1 examination documenting accommodations he received in undergraduate school, graduate school, and medical school.

## CONCLUSION

For all the forgoing reasons, Plaintiff respectfully requests that the Court enter an order Granting its Motion for Leave to File Plaintiff’s First Amended Complaint, attached hereto, deeming the amendment filed as of the date of the Order and granting any additional relief as this Court deems just and proper.

Dated this 3<sup>rd</sup> day of August, 2015

Respectfully submitted,

s/ Richard Katz

**Richard Katz**  
Pro se  
3364 Parker Lane  
East Stroudsburg, PA  
18301

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via U.S. Mail to Defendants:

- 1. FEDERATION OF STATE MEDICAL BOARDS (FSMB)**  
**400 Fuller Wiser Road, Suite 300**  
**Eules, Texas 76039-3855**
- 2. Hamburg & Golden, P.C.**  
**Neil J. Hamburg**  
**1601 Market Street Suite 3310**  
**Philadelphia, PA 19103-1443**

On this 3rd day of August 2015.

By: s/ Richard Katz

Richard Katz  
Pro se